

## Internal Revenue Service

Number: **201049001**

Release Date: 12/10/2010

Index Number: 992.02-00, 9100.22-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-100865-10

Date:

August 23, 2010

In Re:

### LEGEND

Taxpayer =  
Parent =

Business A =

Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =

Taxable Year 1 =  
Taxable Year 2 =  
Taxable Year 3 =  
Taxable Year 4 =

Accounting Firm =

Dear :

This responds to the letter from your authorized representative dated January 5, 2010, requesting a ruling that Taxpayer be permitted an extension of time under Treas. Reg. § 301.9100-3 to file Form 4876-A ("Election to be Treated as an Interest Charge DISC") in accordance with Temp. Treas. Reg. § 1.921-1T(b)(1) to be effective as of Date 1.

The rulings given in this letter are based on facts and representations submitted by Taxpayer and accompanied by a penalties of perjury statement. This office has not

verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### FACTS

Taxpayer is a domestic corporation that is wholly owned by Parent, a domestic corporation. Parent is engaged in Business A. Taxpayer was incorporated on Date 2 with the intent that it would eventually elect to be treated as an interest charge domestic international sales corporation ("DISC") when such election would benefit Parent.<sup>1</sup> Taxpayer chose to neither undertake activities in Taxable Years 1 and 2 nor make a DISC election for those taxable years. However, Parent made a capital contribution to Taxpayer in Taxable Year 1, and Taxpayer filed income tax returns for Taxable Years 1 and 2.

Late in Taxable Year 2, Parent performed an analysis of benefits to be gained from DISC treatment for Taxpayer and decided that Taxpayer should make a DISC election that would be effective for Taxable Year 3. On Date 3 (within 90 days after the beginning of Taxable Year 3), Taxpayer filed Form 4876-A and began operating as a DISC, believing erroneously that the election would be effective pursuant to the third sentence of Temp. Treas. Reg. § 1.921(a)-1T(b)(1).

In Date 4, Parent consulted Accounting Firm regarding various technical issues concerning the operation of a DISC. At that time, Parent learned that Taxpayer's Form 4876-A was neither timely filed nor effective for any taxable year because it was not filed during the 90-day period immediately preceding the beginning of a taxable year as required by section 992(b)(1)(A) in the case of existing corporations. Therefore, on Date 5 (within 90 days before the beginning of Taxable Year 4), Parent filed a protective Form 4876-A and sought an extension of time from the Secretary (i.e., the subject of this letter ruling) to make a DISC election for Taxable Year 3.

Taxpayer made the following arguments: (1) the first clause of section 992(b)(1)(A) does not "prescribe" a due date within the meaning of Treas. Reg. § 301.9100-1(b); (2) past private letter rulings with respect to DISC elections demonstrate that the particular election at issue is a regulatory election; (3) repetition of a statutory due date in a regulation results in a regulatory election if the regulation provides any guidance in addition to the repetition; (4) statutory language mentioning the possibility of regulatory elections (as in the second clause of section 992(b)(1)(A)) automatically transforms any accompanying statutory election into a regulatory election; (5) this election is analogous to elections provided in Treas. Reg. §§ 1.108-4(b) and 1.1502-21(b)(3)(i), both of which have been characterized as regulatory elections for 9100 relief purposes in private letter rulings; and (6) in the alternative, 9100 relief is not necessary in this case because the

---

<sup>1</sup> In particular, Taxpayer did not want to violate section 943(h) of the extraterritorial income exclusion provisions.

second clause of section 992(b)(1)(A) gives us the authority to grant relief with respect to both regulatory and statutory DISC elections.

The period of limitations on assessment under section 6501(a) has not expired for Taxpayer's taxable years for which the election is being made or any taxable years that would have been affected by the election had Taxpayer made a timely election.

Taxpayer has requested a ruling that grants an extension of time to file Form 4876-A within 60 days from the issuance of a favorable ruling letter so that the form will be treated as timely filed within the 90 days preceding Year 4.

### **LAW AND ANALYSIS**

Section 992(b)(1)(A) provides:

An election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in relevant part:

A corporation electing interest charge DISC status must file Form 4876A. A corporation electing to be treated as a FSC, small FSC, or interest charge DISC for its first taxable year shall make its election within 90 days after the beginning of that year. A corporation electing to be treated as a FSC, small FSC, or interest charge DISC for any taxable year other than its first taxable year shall make its election during the 90-day period immediately preceding the first day of that taxable year. The election to be a FSC, small FSC, or interest charge DISC may be made by the corporation, however, during the first 90 days of a taxable year, even if that taxable year is not the corporation's first taxable year, if that taxable year begins before July 1, 1985. Likewise, the election to be a FSC (or a small FSC) may be made during the first 90 days of any taxable year of a corporation if the corporation had in a prior taxable year elected small FSC (or FSC) status and the corporation revokes the small FSC (or FSC) election within the 90 day period. A corporation which was a DISC for its taxable year ending December 31, 1984, which wishes to be treated as an interest charge DISC beginning with its

first taxable year beginning after December 31, 1984, may make the election to be treated as an interest charge DISC by filing Form 4876A on or before July 1, 1987. Also, if a corporation which has elected FSC, small FSC or interest charge DISC status, or a shareholder of that corporation, is acquired in a qualified stock purchase under section 338(d)(3), and if an election under section 338(a) is effective with regard to that corporation, the corporation may re-elect FSC, small FSC or interest charge DISC status, (whichever is applicable) not later than the date of the election under section 338(a), see section 338(g)(i) and § 1.338-2(d).

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I. Similar relief is generally not available for statutory elections.<sup>2</sup>

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin, and provides that a statutory election is an election whose due date is prescribed by statute. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interest of the Government.

The election prescribed in the first clause of section 992(b)(1)(A) is, on its face, a statutory election. That fact is not changed by the repetition of that election in Temp. Treas. Reg. § 1.921-1T(b)(1). Consistent with the second clause of section 992(b)(1)(A), the Secretary has prescribed in regulations other times for making the election. These include a due date for newly formed corporations, three due dates that were applicable to the transition period associated with the revision of the DISC provisions and enactment of the FSC provisions at the end of 1984,<sup>3</sup> and a due date for

---

<sup>2</sup> 9100 relief is available for statutory elections in only one limited case that is not applicable here. See Treas. Reg. § 301.9100-2(b).

<sup>3</sup> See also T.D. 7983, 1984-2 C.B. 151, and Ann. 85-1, 1985-1 I.R.B. 42 (both documents providing precursor transition period election due dates).

making the election in connection with certain qualified stock purchase transactions. See generally Temp. Treas. Reg. § 1.921-1T(b)(1). These elections, which have due dates prescribed in the regulation, but not the statute, are regulatory elections.

Upon careful consideration, we do not agree with Taxpayer's arguments summarized above, and we do not agree that the authorities cited by Taxpayer in support of those arguments stand for the propositions for which Taxpayer cites them.<sup>4</sup> The only DISC election that possibly can apply to Taxpayer in this case, and the only election that Taxpayer is attempting to make in this case, is the election that is statutorily prescribed in the first clause of section 992(b)(1)(A) and then repeated in Temp. Treas. Reg. § 1.921-1T(b)(1). Further, because the Secretary exercised his authority to provide in regulations a number of additional election due dates for particular circumstances, because none of those regulatory elections apply to Taxpayer in this case, and because the 9100 relief rules explicitly provide the remedy with respect to missed elections, we do not interpret the second clause of section 992(b)(1)(A) as providing authority (above and beyond the authority to grant 9100 relief), to grant Taxpayer's request for relief with respect to the statutory election at issue.

Therefore, the Commissioner does not have discretionary authority under Treas. Reg. § 301.9100-1(c) or otherwise to grant Taxpayer an extension of time to make that election. Accordingly, Taxpayer is not granted an extension of time to make a DISC election effective for Taxable Year 3.

Consideration of the granting of an extension in this letter ruling is not a determination that Taxpayer is otherwise eligible to make the election or to claim DISC status or benefits for any taxable year.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that written determinations may not be used or cited as precedent. Except as expressly provided herein, this ruling neither expresses nor implies any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this ruling letter.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by

---

<sup>4</sup> Further, to the extent those authorities are private letter rulings, we note that, in any event, they carry no precedential value. See I.R.C. § 6110(k)(3).

attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

---

Christopher J. Bello  
Chief, Branch 6  
Associate Chief Counsel  
(International)